IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF OCTOBER,
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 2847 of 1998

Between:

1. N.R.Shivaraj, S/o.Sri N.Ram Kishan.

Aged 48 years, Assistant Registrar,

Dr.B.R.Ambedkar Open University,

Jubilee Hills, Hyderabad.

2. K.Jayaprakash, s/o.Baburao,

aged 51 years, Assistant Registrar,

Dr.B.R.Ambedkar Open University,

Jubilee Hills, Hyderabad.

3. P.Seshagiri Rao, S/o.P.V.S.Punneswar

Rao, aged 42 years, Asst. Registrar,

Dr.B.R.Ambedkar Open University,

Jubilee Hills, Hyderabad.

Writ petition is dismissed as withdrawn

in so far as first petitioner is concerned

as per Court orders in WP No.2847 of

1998 dated 12.10.2001.

..... PETITIONERS

AND

Dr.B.R.Ambedkar Open University,

Jubilee Hills, Hyderabad,

Rep. by its Registrar.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction especially in the nature of a Writ of Mandamus directing the Respondents herein to accord notional promotions to the petitioners as Assistant Registrar on par with the other persons like M.Srinivas and M.Sudhakar in view of the E.C.Resolution No.2, dated 17-01-1989 and consequentially direct the respondent to consider the petitioners for promotion to the posts of Dy.Registrars and accord all consequential and other benefits by disposing of their representations/objections filed.

Counsel for the Petitioners: MR.Y.VENKAT SASTRY

Counsel for the Respondents: MR.M.RATNA REDDY

The Court made the following:

ORDER:

This Writ Petition is filed seeking a Mandamus directing the respondent to accord notional promotion to the petitioners as Assistant Registrars on par with other persons and consequently direct the respondent to consider the petitioners for promotion to the post of Deputy Registrar and accord consequential reliefs.

On the formation of Dr.B.R.Ambedkar Open University, some personnel were drafted from various sources to work in various capacities in the University and among them, petitioner No.2 was drafted from APSRTC and petitioner No.3 was drafted from Osmania University and they were appointed as Superintendents in the University in the year 1986. According to the petitioners, at the time of their joining as Superintendents in the University, as there were no rules governing the service conditions of the employees, the State Government Service Rules were followed. However, ultimately with effect from 1-10-1988 Service Rules were framed by the University. As per Rule 4 of the said Rules, a pass in accounts test for subordinate officers part-1 was made compulsory for the Superintendents for their promotion to the post of Assistant Registrar and Deputy Registrar. The proviso to the said rule says that:

> "Any person already appointed as Superintendent, who has not passed the accounts test for subordinate Officers Part-I is required to pass the test within a period of three years from the date of coming into force of these rules. Failure to pass the test, which entail stoppage of increment without cumulative effect till he passes the test."

While so, on 8-1-1990 a Departmental Promotion Committee was constituted for considering promotion of all the eligible persons to the post of Assistant Registrar. According to the petitioners, they were not considered for promotion to the post of Assistant Registrars on par with one Mr.M.Srinivas and Mr.M.Sudhakar.

According to the learned counsel for the petitioners, the Proviso to Rule 4 of the

Service Rules contemplates that they should pass the Account test within a period of three years and as such as on the date of DPC which was constituted on 8-1-1990, they had till three years of time to pass the accounts test for subordinate officers part-1. Therefore, they were also eligible for being considered for promotion to the post of Assistant Registrar, which was not done by the University and the same is arbitrary and illegal. It is not in dispute that the said Mr.M.Srinivas and Mr.M.Sudhakar, who were also appointed as Superintendents in the University and drawn from various departments, have already passed account test for subordinate officers part-I when they were being considered by the DPC on 8-1-1990 itself.

A detailed counter-affidavit has been filed on behalf of the respondent denying the averments made in the affidavit filed in support of the Writ Petition.

Heard both the learned Counsel.

The learned Counsel for the petitioners drawn my attention to Rule 4 of the Service Rules of Dr.B.R.Ambedkar University, which came into effect from 1-10-1988 reads as under:

> "4.Qualification for appointment: No person shall be eligible for appointment to the category and by the method specified in the table below unless he possesses the qualifications prescribed in the corresponding entry in column (3) thereof.

Category	Method of appointment	Qualifications
1.Deputy Registrar	Promotion from Assistant Registrar	I) A Degree in Arts/Science/Commerce ii) 15 years of regular service in a University Government/ Quasi Government/Autonomus organization dealing with Education/Research matters of which not less than three years on duty shall be as Asst. Registrar in the Dr.B.R.A. Open University. iii) A pass in the Accounts test for Subordinate

Officers part I or Accounts test for Executive Officers conducted by the APPSC or its equivalent examination or a departmental test in Accounts and Administration conducted by the Universities for their employees.

2.Asst.Registrar Direct I)A Degree in Arts/Science/Commerce.

Recruitment II)12 years of regular service in a

University/Educational institution /Government Department of which not less than 5 years shall be as Superintendent in charge of General/Administration/ Academic/Accounts/Admissions/ Examinations/Committee work /Development work/Secretariat work.

III) A pass in Accounts test for Sub-

ordinate Officers part I or Accounts Test for Executive Officers conducted by the APPSC or its equivalent examination or a Departmental test in Accounts and Administration conducted by the Universities for their employees.

Desirable: A Master's Decree

Age not more than 40 years

(Amended as per E.C.resolution No.6

dt.9.1.1990)

By promotion from I) A Degree in Arts/Science/Commerce

Superintendent

II) 12 years of regular service in a

University / Educational Institution/ Government Department of which not less than 2 years on duty shall be as Superintendent in the open university. Steno (Superintendent cadre) should get absorbed as Superintendent to become eligible for promotion to the next grade. He should put in at least 2 years of service as Steno

(Superintendent. Cadre) before absorption.

III) A pass in the Accounts test for Subordinate Officers part I conducted by the APPSC or its equivalent examination or a departmental test in Accounts and Administration conducted by the Universities for their employees.

(Amended as per E.C.Resolution No.1 dated 10-4-1992).

As per the addition made to the said rules (in rule 10 TESTS) under the E.C.Resolution No.2 dt.17.1.89).

> "(d) Any person already appointed as Superintendent who has not passed the Accounts test for Subordinate Officers Part I is required to pass the test within a period of three years from the date of coming into force of these rules. Failure to pass the test will entail stoppage of increment without cumulative effect till he passes the test."

The whole emphasis given by the learned counsel for the petitioner is that once three years period is allowed to pass the accounts test for the post of Superintendents who have not passed the Accounts test, they are entitled for being considered even as on 8-1-1990 along with others though they have not passed the test.

I am of the considered opinion that the purport of Proviso to the said Rule is only that the Superintendents who have been drawn from various other departments and who have not passed the accounts test for subordinate officers part-I are required to pass the account test within a period of three years. That does not mean that they are entitled for being promoted to the post of Assistant Registrar without passing the said accounts test. Admittedly, as on 8-1-1990, both the petitioners have not passed the account test, but they have passed the account test for subordinate officers Part-I

only after the Departmental Promotion Committee was constituted on 8-1-1990 and the said Mr.M.Srinivas and Mr.Sudhakar were promoted. Therefore, the petitioners cannot claim that their case ought to have been considered for promotion to the post of Assistant Registrar without acquiring the qualification of passing the account test for subordinate officers part-I. Unless and until they passed the account test, the question of considering their promotion by D.P.C on par with others on 8-1-1990 would not arise. The Proviso to the said Rule only protects the rights of those Superintendents who have already been appointed as such. To acquire the said qualification i.e. a pass in the accounts test for subordinate officers part-I within a period of three years is necessary, failure to pass such account test entails stoppage of increments without cumulative effect till he passes the account test. Once there is entailment of stoppage of increments for not acquiring the qualification, such a candidate cannot aspire to be promoted automatically to the post of Assistant Registrar since grace period of three years was granted to them to pass the said test.

For all the above reasons, the writ petition is devoid of merits and is liable to be dismissed.

The Writ Petition is accordingly dismissed. No costs.

Stp 12-10-2004

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. Dr.B.R.Ambedkar Open University,

Jubilee Hills, Hyderabad,

Rep. by its Registrar.

2. 2CD copies

THE HON'BLE MR JUSTICE C.V.RAMULU

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

WRIT PETITION NO : 2847 of 1998

12-10-2004

-